

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CIVIL REVISION APPLICATION No 1105 of 1987
For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

YUSUFBHAI I JASADWALA

Versus

BAI ASHI, W/OF GANIBHAI NABI.

Appearance:

MR K.V. Shelat for Petitioner

MR Kalpesh Zaveri for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/11/2000

ORAL JUDGEMENT

This is a revision application by the original defendant of H.R.P. Suit No.4166 of 1981, which was filed by the present respondents herein for getting decree for possession.

The respondents herein are the original plaintiffs of aforesaid H.R.P. suit. The aforesaid suit was filed for getting decree for possession of suit premises bearing No.M.C. 3702/1, situated in Mota Bamba, Kazi na Dhaba, Astodia, Ahmedabad. The petitioner herein is occupying the first floor of the suit premises. It is stated by the plaintiff in the said suit that the suit premises were let out to the father of the defendant at a monthly rent of Rs.15/- and that the defendant has paid rent upto 31.12.1977 and accordingly, he is in arrears of rent from 1.1.1978. The father of the defendant died in 1975 and out of his three sons, two sons, viz., Musabhai

and Ganibhai, left India and that they have now settled in Pakistan prior to 1975. On behalf of the plaintiff, Miscellaneous Application No.534 of 1979 was filed for deciding the question about transmission of tenancy after the death of the original defendant Ibrahimbhai. In that application, the defendant of the present suit was declared as tenant. It is the say of the plaintiff in the said suit that the defendant has acquired another premises in the Jamalpur area and, therefore, he is liable to be evicted from the suit premises. Before filing the suit, notice was given on 10.1.1978, asking the defendant to vacate the suit premises and ultimately, the suit for possession was filed for decree for possession on the ground of arrears of rent as well as on the ground that the defendant has acquired an alternative suitable residence.

The defendant appeared in the suit and filed Written Statement at Exhibit 11 and contended that all the sons of his father are the tenants as all of them have tenancy rights in the suit premises and, therefore, the suit filed only against him is not maintainable and that he was occupying the suit premises as a tenant on his behalf as well as on behalf of his other brothers. He stated that he has not acquired any suitable residence as alleged by the plaintiff.

From the pleadings of the parties, the trial court has framed issues at Exhibit 17 and after recording evidence of the parties and after hearing the arguments of the concerned Advocates, it was found that the defendant has acquired alternative suitable premises and ultimately, the suit for possession was decreed by the trial court.

The aforesaid decree of the trial court was challenged by the defendant by way of appeal, being Civil Appeal No.187 of 1986. The appellate court also found that the defendant has acquired alternative residence as contemplated by Section 13(1)(1) of the Rent Act. It was found that after acquiring alternative accommodation, the defendant has disposed of the said house by selling the same, but again purchased another house situated at Ganchi's Pole from one Fatechand Rana for Rs.1,95,000/-. It was, therefore, found that the defendant was required to be evicted under Section 13(1)(1) of the Rent Act. The aforesaid decree of the appellate Bench of the Small Causes Court passed in Civil Appeal No. 187 of 1986 is challenged by the present petitioner-original defendant in this Revision Application by invoking Section 29(2) of the Bombay Rent Act.

At the time of hearing of this Revision Application, Mr.K.V. Shelat for the petitioner-defendant has argued that it is no doubt true that, subsequently, during the pendency of the suit, his client has sold away the property and, therefore, in any case, when the decree was passed by the trial court, he was not having any alternative accommodation at his command. He further argued that in any case, two brothers of the defendant, who are residing in Pakistan, are also visiting India regularly and, therefore, even if the defendant has purchased alternative premises, it cannot be said that the same is suitable so far as the brothers are concerned.

I have gone through the judgments of both the Courts and after considering the evidence on record, I am of the opinion that there is no substance in the argument of Mr.Shelat. It is not in dispute that the defendant has purchased alternative residence and subsequently, during the pendency of the suit, he has disposed of the same. However, the learned appellate court has observed that for that he must thank himself and none else. Defendant who was occupying the rented premises was duty bound to hand over the rented premises moment he purchased alternative accommodation and if he has disposed of that property, he cannot get out from the operation of Section 13(1)(1) of the Rent Act. It is not in dispute that after the sale of one property, the defendant again purchased another premises in Ganchi's Pole from one Fatechand Rana for Rs.1,95,000/-. Mr. Shelat says that it was also subsequently sold by him as he was in financial difficulty. If during the pendency of the suit, if the property is disposed of, the tenant cannot get any protection and decree under Section 13(1)(1) is required to be passed. A Division Bench of this Court has also taken a view in Shivilal Nathuram Vaishnav v. Harshadrai Haribhai Oza & Ors, XXI GLR 99 to the said effect. As a matter of fact, when the suit was filed, the tenant was already having alternative accommodation at his command and he cannot defeat the right of the plaintiff by subsequently selling away the said property. I, therefore, do not find any substance in the argument of Mr.Shelat that subsequently, the tenant, during the pendency of the proceedings, has sold away the property.

So far as the contention about right of two other brothers of the defendant is concerned, it has been found by the appellate court that those brothers have acquired citizenship of Pakistan and that even otherwise, in

earlier proceedings, where the question which was required to be decided was as to who was the tenant, ultimately, it was found that the defendant is the tenant of the suit premises and in that proceeding, order was passed by consent of the parties. It is, therefore, now not open for the present defendant to say that he alone is not the tenant and his brothers have also tenancy rights in the suit premises. The said contention is taken only in order to come out from the provisions of Section 13(1)(1) of the Rent Act. At present, only the defendant is occupying the suit premises and there is nothing to show that other brothers are also coming and residing regularly in the suit premises. In that view of the matter, there is no substance in the argument of the defendant in this behalf. In any case, it cannot be said that the reasonings of the appellate Bench are in any way contrary to law and this Court, while exercising revisional powers under Section 29(2) of the Rent Act, has to consider whether the judgment of the courts below are in accordance with law or not. It cannot be said that any error of law is committed by the courts below in passing decree in favour of the plaintiff. For the aforesaid reasons, I do not find any substance in the Revision Application and the same is dismissed. Rule is discharged with no order as to costs.

At this stage, Mr. Shelat for the petitioner has requested for some time for the purpose of vacating the suit premises. He pointed out that, at present, there is no alternative accommodation available to the petitioner and in the rented premises, which is the only premises in his possession, he and 11 members of his family are residing. He also submitted that the petitioner is a financially ruined person and he is practically living hand to mouth. Mr. Zaveri for the respondent-landlord has said that he has no objection if on filing usual undertaking, some time is given to the petitioner for vacating the suit premises. Considering the facts and circumstances of the case, I grant time till 31st January, 2003 to the petitioner for vacating the suit premises. The decree for possession may not be executed till 31st January, 2003. The aforesaid time is given subject to the petitioner filing usual undertaking before this Court. Undertaking to be filed within a period of four weeks from today. Copy of such undertaking to be given to the learned Advocate for the other side. If undertaking is not filed within the stipulated period, it would be open for the respondent to execute the decree for possession forthwith.

(apj)